Filed 11/12/20 Darwish v. Riley CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BARBARA DARWISH et al., Plaintiffs and Appellants, v. DENNIS P. RILEY et al., Defendants and Respondents.	B300254 (Los Angeles County Super. Ct. No. LC106660)

APPEAL from an order of the Superior Court of Los Angeles County, Shirley K. Watkins, Judge. Affirmed.

Stillman & Associates and Phillip H. Stillman for Plaintiffs and Appellants.

Mesisca Riley & Kreitenberg, Dennis P. Riley and Rena E. Kreitenberg; Law Offices of Mike N. Vo and Mike N. Vo for Defendants and Respondents.

* * * * * *

This litigation train keeps on chugging. What started as an unlawful detainer action in 2010 has metastasized into eight separate lawsuits that have, so far, spawned six other appeals. This is appeal number seven. This time around, the trial court granted an anti-SLAPP motion (Code Civ. Proc., § 425.16)[1] and dismissed three of the landlord's claims against the tenants and their lawyer. We conclude that the trial court properly dismissed two of the three claims under the anti-SLAPP statute and that the third claim is properly dismissed in light of the dismissal of those two claims. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *The tenancy*

In 2010, six unrelated people—Jack Vaughn, Esmeralda Hernandez, Wayne Hart (Hart), Dennis Goldson, Carlos Rodriguez (Rodriguez), and Ernest Johnson (collectively, the tenants)—were living in a two-story, single-family house located on Hyperion Avenue in Los Angeles. In August 2010, the house was acquired at a foreclosure sale by an entity controlled by Barbara Darwish (Barbara).[2] Since then, title to the house has been held by Gingko Rose, Ltd., whose members includes Barbara, her husband David Darwish (David), and another entity (Logerm, LLC) controlled by the Darwishes (collectively, the landlord).

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1 SLAPP is short for "Strategic Lawsuit Against Public Participation."

All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

2 Because the Darwishes share the same surname, we will use their first names to avoid confusion. We mean no disrespect.

Between 2010 and 2012, the landlord initiated three separate sets of unlawful detainer actions against the tenants. Each set failed.

The tenants moved out on September 13, 2017.

B. *The tenants' lawsuits against the landlord*

1. *Civil damages action*

In 2011, the tenants sued the landlord for damages based on tortious breach of warranty of habitability and quiet enjoyment, retaliatory eviction, and violations of the Los Angeles Rent Stabilization Ordinance. The matter eventually went to a jury, who awarded the tenants a total of approximately $300,000 in compensatory damages and $5.5 million in punitive damages. We affirmed the verdicts but substantially reduced the punitive damages awards to a total of $900,000.

On August 4, 2017, the parties filed an acknowledgement of satisfaction of judgment after the landlord had paid the verdict in full.

2. *Malicious prosecution action*

In September 2013, the tenants sued the landlord for the malicious prosecution of the third round of unlawful detainer actions.

The trial court granted the landlord's motion for judgment on the pleadings as to two of the tenants—Hart and Rodriguez. The unlawful detainer court had held a bellwether trial as to those two tenants; although that court ultimately ruled in their favor, it did so after denying those two tenants' midtrial motion for relief under section 631.8. The trial court in the malicious prosecution action reasoned that the unlawful detainer court's denial of the section 631.8 motion amounted to a finding that the landlord had probable cause to prosecute the unlawful detainer

actions against Hart and Rodriguez, which conclusively precluded those two tenants' malicious prosecution action.

Hart and Rodriguez appealed, and we affirmed the ruling in a published decision. (*Hart v. Darwish* (2017) 12 Cal.App.5th 218 (*Hart*).)

Following remand, the trial court conducted a bench trial on the malicious prosecution actions brought by three of the remaining tenants.[3] At the conclusion of the trial, the court granted the landlord's section 631.8 motion and entered judgment for the landlord.

The remaining tenants appealed. In a separate opinion that we file today along with this opinion, we affirm the trial court's judgment in favor of the landlord (albeit on different grounds than the trial court). (*Vaughn v. Darwish* (Nov. 12, 2020, B296693) [nonpub. opn.].)

3. *Fraudulent transfer action*

a. Pleadings

On November 27, 2013, the tenants sued the Darwishes, their two adult children, and various trust entities (1) for fraudulently transferring various properties they owned in order to make it difficult for the tenants to collect their then-$6 million judgment, (2) to create a constructive trust, (3) to create a resulting trust, (4) for declaratory relief "pled in the alternative" to the fraudulent transfer claim, and (5) for injunctive relief, "[t]o the extent any of the transactions . . . are considered to be fraudulent transfers." Although the tenants alleged specific transactions as to only 15 properties, they more broadly alleged

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3 The fourth remaining tenant had, by that time, passed away.

that the landlord owned 33 properties and "did transfers as to all" as part of a "conspir[acy] to conceal" assets from collection.

b. Filing of lis pendens

On the same day the tenants filed the fraudulent transfer action and with the same case caption and case number, they recorded a Notice of Pendency of Action (the lis pendens) in the pertinent county recorder's offices. The lis pendens stated that "[t]he above-captioned action alleges a real property claim affecting title and ownership of certain real property" in Los Angeles County, and went on to list 20 of the 33 parcels listed in the fraudulent transfer action's complaint.

c. Dismissal of constructive and resulting trust claims

In June 2014, the trial court sustained a demurrer without leave to amend to the constructive trust and resulting trust claims of the tenants' fraudulent transfer action. This left viable only the fraudulent transfer and the derivative declaratory and injunctive relief claims.

d. Various motions for judgment on the pleadings and/or expungement of the lis pendens

The landlord has since made three motions for judgment on the pleadings and two motions to expunge the lis pendens.

On March 3, 2015, the landlord filed a motion for judgment on the pleadings on the ground that it had posted an appeal bond in the civil damages action that was sufficient to ensure the tenants' collection of the judgment in that case and thus mooted out the tenants' fraudulent transfer claim (as well as the derivative claims). On May 19, 2015, the trial court granted judgment to the landlord. On October 5, 2015, the landlord filed a motion to expunge the lis pendens based on that judgment. The tenants appealed. On December 30, 2016, we reversed the trial

court's grant of judgment due to uncertainty as to whether the appeal bond covered the full amount of the tenants' possible recovery on the judgment. We urged the trial court to consider staying the fraudulent transfer action until the civil damages action judgment was paid in full (at which time the fraudulent transfer action could be dismissed) or until it was clear that the civil damages action judgment could not be paid in full (at which time the fraudulent transfer action could move forward).

In the fall of 2017, the landlord filed a second motion for judgment on the pleadings on the ground that the landlord had fully satisfied the civil damages action judgment. The tenants responded by filing an ex parte request to amend their fraudulent transfer claim to allege that the landlord had effectuated the transfers for a second reason—namely, "to prevent collecting on any future judgments in the" still-pending malicious prosecution action. On December 7, 2017, the trial court granted the landlord's motion for judgment on the pleadings and granted the tenants' request to file an amended complaint, but stayed the proceedings until such time as (1) the first appeal of the malicious prosecution action (involving Hart and Rodriguez) was completed, and (2) Gingko Rose, Ltd. (one of the entity defendants), which had filed for bankruptcy, was no longer in bankruptcy.

In March 2019, the landlord filed a third motion for judgment on the pleadings on the grounds that the first appeal of the malicious prosecution action (involving Hart and Rodriguez) had concluded and that the trial court had ruled in the landlord's favor as to the remaining defendants. In April 2019, the trial court denied the motion because Gingko Rose, Ltd. was still in bankruptcy. The court also extended the stay until the

conclusion of the second appeal (by the remaining tenants) in the malicious prosecution action.

In July 2019, the landlord filed a motion to expunge the lis pendens on the grounds that the trial court had ruled in the landlord's favor as to the remaining defendants in the malicious prosecution action and that Gingko Rose, Ltd. had voluntarily dismissed its bankruptcy action. On August 7, 2019, the trial court denied the motion to expunge on the ground that the fraudulent transfer action was still stayed due to the pendency of the second appeal in the malicious prosecution action. The landlord petitioned this court for a writ, which we denied on July 20, 2020.

II. Procedural Background

A. *Pleadings*

On December 28, 2017, the Darwishes, their two children and several of the trusts named as property owners in the fraudulent transfer action[4] (collectively, the landlord plaintiffs) sued (1) the tenants, (2) the tenants' lawyer Dennis Riley (Riley), (3) Riley's law firm, and (4) one of Riley's partners. The landlord plaintiffs did not serve the complaint until "early February" of 2018.[5]

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4 Specifically, the trusts that sued are AHIAB, Inc., Almont Trust, 1132 Hyperion Ave. Trust, 1043 Curson Avenue Trust, 5127 Avenida Hacienda Trust, 3055 Landa St. Trust, 809 N. Alvarado Trust, Pickford St. Trust, 1117 Waterloo St. Trust, 5742 Corbin Trust, and 14410 Friar St. Trust.

5 The parties opted not to include the proof of service in the record. However, the trial court found that the complaint was served "in early February" of 2018. Because we presume that the

On March 2, 2018, the landlord plaintiffs filed the operative First Amended Complaint. Three of the five claims in this complaint are related to the tenants' fraudulent transfer action. Specifically, the landlord plaintiffs alleged (1) a claim for slander of title because "[t]he [l]is [p]endens [the tenants filed in the fraudulent transfer action] cast doubt on the [landlord plaintiffs'] or some of their title or right of possession" to the properties listed in the lis pendens, thereby interfering with the "saleability" of those properties, (2) a claim to expunge the lis pendens the tenants filed in the fraudulent transfer action because that action does not "contain[] a real property" claim and is thus statutorily invalid, and (3) a claim for damages based on Riley's fraudulent transfer of an unspecified property on an unspecified date to his wife, which was effected to evade unspecified "debts beyond [Riley's] ability to pay as they came due, by reason of his practice of law as an 'ambulance chaser' seeking to earn contingency fees from aggressive solicitation and 'prospecting' for marginal claims of indigent, coached 'clients.'" In this appeal, the landlord plaintiffs clarified that their fraudulent transfer claim is tied to the slander of title claim because Riley effectuated the transfer to evade "a judgment for substantial damages [the landlord plaintiffs] expect to obtain from Riley for his egregious slander of title." The remaining two claims in the operative complaint are related to the tenants' act of vacating the Hyperion house in September 2017. Specifically, the landlord plaintiffs bring claims for malicious mischief (vandalism) and breach of contract based on the tenants' actions in "trashing" the premises before they left.

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trial court's recitation of the record is correct (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564) and because no party sought to rebut that presumption, we will use this date.

B. *Motions to strike*

1. *First motion based on procedural improprieties and improper venue*

On February 16, 2018, the tenants filed a motion to strike (1) the fraudulent transfer claim because the landlord plaintiffs did not obtain the pretrial filing order required by Civil Code section 1714.10, subd. (a), which requires trial court permission before filing a claim that accuses a lawyer of conspiring with his client, and (2) the entire original complaint because (a) the lawyer who filed the lawsuit in November 2017 since passed away (leaving the landlord plaintiffs with no attorney) and (b) this action should be transferred and consolidated with the fraudulent transfer action.

On March 14, 2018, the trial court denied the motion for two reasons: (1) it was moot in light of the landlord plaintiffs' filing of the First Amended Complaint, and (2) the tenants did not comply with the mandatory meet-and-confer statute before filing their motion to strike.

On March 21, 2018, Riley filed an appeal of this order. We dismissed the appeal as procedurally improper in February 2019. The remittitur was issued to the trial court on April 9, 2019.

2. *Second motion based on anti-SLAPP statute*

On April 11, 2019, the tenants filed an anti-SLAPP motion to strike the three claims in the First Amended Complaint related to the fraudulent transfer action. Specifically, the tenants argued that these claims lacked minimal merit because they were barred by the statute of limitations, by the litigation privilege and by collateral estoppel.

The landlord plaintiffs filed an opposition (which they declined to provide us on appeal) as well as a motion to strike the

tenants' anti-SLAPP motion.[6] To each, the landlord plaintiffs attached a declaration from their adult daughter Eden, but the trial court sustained the tenants' objections to its contents as well as its attachments.[7]

On June 24, 2019, the trial court granted the anti-SLAPP motion. As a threshold matter, the court ruled that the tenants' anti-SLAPP motion was timely and, to the extent it was not, that the tenants had demonstrated "good cause" for filing it late due to the "procedural delays and stays" that "rendered it impossible for [them] to file a motion within 60 days." The court then explained why each of the three claims at issue was properly dismissed under the anti-SLAPP statute. Both the expungement and slander of title claims were based upon "protected activity" within the meaning of the statute because they arose out of a "pending judicial proceeding." The court found that the expungement claim lacked minimal merit because (1) motions for expungement of a lis pendens must be brought in the proceeding to which the lis pendens is tied, and (2) entertaining the claim in a separate

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6 The trial court summarily denied the landlord plaintiffs' motion to strike as procedurally baseless.

7 In their reply brief, the landlord plaintiffs urge us to rely on the declaration's contents, despite the trial court's evidentiary rulings, on the ground that the declaration was appended to their motion to strike and thus deals with a different "issue." This is not only a blatant misrepresentation of the record, but is inconsistent with the landlord plaintiffs' assertion—just four pages earlier in the same brief—that their motion to strike and the opposition to the anti-SLAPP motion have the same content and thus deal with the same issue. This sort of double-speak is inconsistent with the advocate's ethical duty of candor to the court.

lawsuit would, in effect, allow the landlord plaintiffs to do an "'end run'" around the stay of the fraudulent transfer action. The court then found that the dismissal of the expungement claim "necessarily results" in the dismissal of the slander of title claim, which was premised on the wrongful filing of the lis pendens. The court found that the fraudulent transfer claim was "protected activity" because an "action for fraudulent transfer in order to avoid payment of debt is a constitutionally protected activity" and that it lacked merit because the landlord plaintiffs offered no evidence whatsoever to support it.

C. *Post-anti-SLAPP rulings*

1. *The landlord plaintiffs' motion for summary adjudication*

While the tenants' anti-SLAPP motion was pending, the landlord plaintiffs filed a motion for summary adjudication of the expungement and breach of contract claims. The trial court denied that motion on August 14, 2019.

2. *The tenants' motion for summary adjudication*

On December 3, 2019, the tenants moved for summary adjudication of the malicious mischief and breach of contract claims. The trial court denied that motion on February 21, 2020, and set the matter for trial. The tenants petitioned this court for a writ of mandate, which we denied on April 16, 2020.

3. *The tenants' motion for anti-SLAPP attorney fees*

After prevailing on the anti-SLAPP motion, the tenants filed a motion for attorney fees seeking $157,400 in fees and $3,064.09 in costs. The trial court awarded $19,200 in fees and $120 in costs after concluding that (1) the tenants' attorneys included fees unrelated to the anti-SLAPP motion, (2) the

tenants' attorneys overstated the time they spent on the motion, and (3) the tenants' attorneys' hourly rates were excessive.

D. *Appeal*

The landlord plaintiffs timely filed this appeal.

DISCUSSION

The landlord plaintiffs argue that the trial court erred in granting the tenants' anti-SLAPP motion and dismissing their expungement of the lis pendens, slander of title, and fraudulent transfer claims. Their briefs on appeal are incoherent; their briefs repeatedly and blatantly misstate the record; and their briefs often provide no legal authority in support of their arguments or, when they do, misstate that authority. The record is also tactically incomplete, going so far as not to include the pertinent filings supporting and opposing the very order at issue on appeal. As such, we would be well within our rights to treat these woefully inadequate briefs and record as a waiver of all arguments on appeal. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1029; *Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 665, 685.) However, to ensure that the clients in this litigation are not prejudiced, we will endeavor to address the merits of the arguments presented on appeal to the extent we are able to discern them.

I. Timeliness of the Tenants' Anti-SLAPP Motion

The landlord plaintiffs argue that the tenants' anti-SLAPP motion, which was filed on April 11, 2019, was untimely because it was filed more than 60 days after the landlord plaintiffs served their original complaint in "early February" of 2018.

The anti-SLAPP statute provides that a motion to strike under its auspices "may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon

terms [the court] deems proper." (§ 425.16, subd. (f).) Thus, when the timeliness of an anti-SLAPP motion is at issue, we must ask two questions: (1) was the anti-SLAPP motion timely (that is, was it filed within "'60 days of service of the complaint"') and, if it was untimely filed, (2) did the trial court properly exercise its discretion to consider the untimely motion? We review the first question de novo (*Starview Property, LLC v. Lee* (2019) 41 Cal.App.5th 203, 208), and the second question for an abuse of the trial court's "considerable discretion" to consider untimely motions (*Platypus Wear, Inc. v. Goldberg* (2008) 166 Cal.App.4th 772, 787 (*Platypus*); *San Diegans for Open Government v. Har Construction, Inc.* (2015) 240 Cal.App.4th 611, 624 (*San Diegans*)).

Whether a trial court abuses its discretion in allowing a party to file an untimely anti-SLAPP motion turns, in pertinent part, on whether its ruling so allowing is compatible with the "purposes and policy" of the anti-SLAPP statute's timeliness requirement. (*Olsen v. Harbison* (2005) 134 Cal.App.4th 278, 285; *Platypus*, *supra*, 166 Cal.App.4th at p. 782; *Hewlett-Packard Co. v. Oracle Corp.* (2015) 239 Cal.App.4th 1174, 1187-1188 (*Hewlett-Packard*).) This analysis contemplates that there is a "point [in time] beyond which an anti-SLAPP motion simply cannot perform its intended function[s]" and is therefore untimely as a matter of law and outside a trial court's discretion to entertain (*Hewlett-Packard*, at p. 1189; *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2018) 4 Cal.5th 637, 645), but recognizes that *when* this point has been reached turns on a number of factors. These factors include: (1) whether there is "anything in the procedural history of th[e] case . . . that would justify allowing the [untimely] filing" (*Platypus*, at

p. 787; *San Diegans*, *supra*, 240 Cal.App.4th at p. 624 [examining "the reasons for the [untimely] filing"]), (2) how close to trial the motion is made (*Kunysz v. Sandler* (2007) 146 Cal.App.4th 1540, 1543; *Hewlett-Packard*, at p. 1189; *San Diegans*, at p. 624 [examining "the length of the delay"]), and (3) whether the "parties have incurred substantial expense" by the time the motion is made (*Hewlett-Packard*, at p. 1188; *San Diegans*, at p. 624 [examining "any undue prejudice to the plaintiffs"]).

We need not decide whether the tenants' motion was timely because, even if we assume it was untimely, the trial court did not abuse its discretion in allowing the tenants to file the motion in April 2019. Although there were nearly 14 months on the calendar between the date the landlord plaintiffs served their complaint (in February 2018) and when the tenants filed their anti-SLAPP motion, all trial court proceedings in this case were stayed for nearly 13 of those months—from March 21, 2018, when the tenants filed a notice of appeal, to April 9, 2019, when the remittitur returned to the trial court. If we exclude that time,[8] the tenants filed their anti-SLAPP motion fewer than 60 days after the landlord plaintiffs served their complaint. Consequently, there is most definitely something in the procedural history of the case that justified the tenants' delay in filing the motion; the motion was made nowhere near the trial date because none had yet been set; and the parties had not

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8 Because what matters for purposes of this inquiry is whether the trial court stayed the proceedings (and thereby precluded the tenants from filing their anti-SLAPP motion), whether the trial court was correct to do so is beside the point. (See § 916, subd. (a); *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196 [trial court proceedings automatically stayed by appeal of anti-SLAPP motion].)

incurred any expense litigating the case in the interim (because nothing had happened with the case during the stay).

The landlord plaintiffs respond that the tenants' decision to file their initial motion to strike on grounds other than the anti-SLAPP statute somehow effected an election that deprived the trial court of its statutorily conferred discretion to entertain an untimely anti-SLAPP motion. The landlord plaintiffs offer no authority in support of their argument, and we reject it as inconsistent with the plain text of the anti-SLAPP statute.

II. Merits of the Anti-SLAPP Motion

The landlord plaintiffs argue that the trial court erred in granting the tenants' anti-SLAPP motion and dismissing their expungement, slander of title and fraudulent transfer claims.

A. *The anti-SLAPP statute, generally*

"The anti-SLAPP statute 'provides a procedure for weeding out, at an early stage, *meritless* claims arising from' activity that is protected by the law. [Citation.] 'Accordingly, a trial court tasked with ruling on an anti-SLAPP motion must ask two questions: (1) has the moving party "made a threshold showing that the challenged cause of action arises from protected activity" [citation], and, if so, (2) has the nonmoving party "established . . . a probability that [it] will prevail" on the challenged cause of action by showing that the claim has "minimal merit" [citations]?' [Citation.]" (*Gruber v. Gruber* (2020) 48 Cal.App.5th 529, 537 (*Gruber*).) "'[W]hether [activity] is protected under the anti-SLAPP statute' turns 'not [on] First Amendment law, but [rather on] the statutory definitions in . . . section 425.16, subdivision (e).' [Citation.]" (*Mission Beverage Co. v. Pabst Brewing Co., LLC* (2017) 15 Cal.App.5th 686, 698.) As pertinent here, subdivision (e) of section 425.16 defines protected activity to include "any

written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body . . . ." (§ 425.16, subd. (e)(2).) "A claim has 'minimal merit' if it is "'both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the [nonmoving party] is credited." [Citations.]' [Citation.]" (*Gruber*, at p. 537.) We independently evaluate a trial court's anti-SLAPP analysis (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3), and are accordingly not bound by the trial court's ruling or its rationale (*Rutgard v. City of Los Angeles* (2020) 52 Cal.App.5th 815, 825).

B. *Analysis*

Applying this law, we will separately examine each of the three claims the trial court dismissed under the anti-SLAPP statute. Before we look at the individual claims, we start by rejecting the landlord plaintiffs' more global assertion that the trial court unfairly granted relief for reasons not specifically advanced by the tenants in their anti-SLAPP motion. This assertion lacks merit because (1) the tenants may well have raised these rationales at the hearing on the anti-SLAPP motion (but we do not know because the landlord plaintiffs did not provide us with a transcript for that hearing), and (2) our review is de novo, and the parties have had a full and fair opportunity to address those reasons in their briefs before this court.

1. *Expungement of lis pendens claim*

a. Is it protected activity?

"The filing of a notice of lis pendens falls squarely within" the anti-SLAPP statute's definition of "protected activity" because a notice of lis pendens is a writing "'made in connection'" with a pending lawsuit (here, the tenants' fraudulent transfer

action). (*Manhattan Loft, LLC v. Mercury Liquors, Inc.* (2009) 173 Cal.App.4th 1040, 1050 (*Manhattan Loft*); *Park 100 Investment Group II, LLC v. Ryan* (2009) 180 Cal.App.4th 795, 805-806; *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1285; *Zhang v. Jenevein* (2019) 31 Cal.App.5th 585, 595.) What is more, the landlord plaintiffs' argument (which we address below) that the lis pendens is invalid because it does not comply with the statutory requirement that it be tied to a "real property claim" does not affect its status as activity protected by the anti-SLAPP statute because otherwise protected activity does not become unprotected "merely by showing [a] statutory violation." (*Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1654.)

b. Have the landlord plaintiffs demonstrated that their expungement of lis pendens claim has minimal merit?

A lis pendens may be recorded in the county recorder's offices as to specific parcels of property by "[a] party to an action who [is] assert[ing] a real property claim." (§ 405.20.) Thus, a lis pendens is proper only if (1) the party recording the lis pendens is a "party to an action" (cf. *Carpenter v. Smallpage* (1934) 220 Cal. 129, 132-133 [a non-judicial foreclosure is not an "action"]; *Manhattan Loft*, *supra*, 173 Cal.App.4th at p. 1053 [an arbitration is not an "action"]), and (2) the party in that action is asserting a "real property claim." (*Kirkeby v. Superior Court* (2004) 33 Cal.4th 642, 647 (*Kirkeby*).) For these purposes and as pertinent here, a "real property claim" is a "cause[] of action . . . which would, if meritorious, affect . . . title to, or the right to possession of, specific real property." (§ 405.4; *Kirkeby*, at p. 647; *Lewis v. Superior Court* (1994) 30 Cal.App.4th 1850, 1860 ["a lis pendens recorded in an action that does not involve title has no

effect"].) At any point after a lis pendens is recorded, a party to the action (or "any nonparty with an interest in the real property affected thereby") "may apply to the court in which the action is pending to expunge the notice" of lis pendens. (§ 405.30.)

The trial court was right to conclude that the landlord plaintiffs' claim to expunge the lis pendens lacked minimal merit, and we so conclude for two reasons.

First, the landlord plaintiffs' expungement claim is not authorized by the plain language of section 405.30. That section requires that an application to expunge a lis pendens must be made "to the court *in which the action is pending*." (§ 405.30, italics added.) Because the tenants recorded the lis pendens in the fraudulent transfer action, this means that the landlord plaintiffs were required to apply to the court hearing the fraudulent transfer action—and hence not allowed to file an entirely separate lawsuit in a different court. (*The Formula Inc. v. Superior Court* (2008) 168 Cal.App.4th 1455, 1464 ["It makes sense to read the statute as it is written and confine a motion to expunge to the court where 'the action' of which notice has been recorded is pending to avoid inconsistent judgments and forum shopping"].)

Second, the claim to expunge the lis pendens lacks substantive merit because the landlord plaintiffs have not carried their burden of showing that the tenants' lis pendens was improper in the first place. The tenants are certainly "part[ies]" to the fraudulent transfer action. What is more, the tenants were asserting a "real property claim" because, if successful, their fraudulent transfer claim would invalidate the grant deeds transferring some of the properties at issue and the deeds of trust encumbering others. A grant deed certainly transfers title to

property, and thus qualifies as a "real property claim." (E.g., *Kirkeby*, *supra*, 33 Cal.4th at pp. 646, 650-651 [lis pendens appropriate for claim involving fraudulent transfer via grant deed]; *Hunting World, Inc. v. Superior Court* (1994) 22 Cal.App.4th 67, 69, 72 [same]; *Mira Overseas Consulting Ltd. v. Muse Family Enterprises, Ltd.* (2015) 237 Cal.App.4th 378, 385 ["'a fraudulent conveyance action seeking avoidance of a transfer . . . clearly "affects title to . . ." real property and is therefore a real property claim for the purposes of the lis pendens statutes'"].) A deed of trust encumbering property also transfers title to the property, albeit only legal title (rather than legal *and* beneficial title). (*Bank of Italy Nat. Trust & Sav. Assn. v. Bentley* (1933) 217 Cal. 644, 656 [a deed of trust "conveys the legal title . . . so far as may be necessary to the execution of the trust . . . solely for the purpose of security," but does not convey "possession"]; *Weber v. McCleverty* (1906) 149 Cal. 316, 320 ["a deed of trust does not create a lien or encumbrance on the land, but conveys the legal title to the trustee"]; *Monterey S.P. P'ship v. W.L. Bangham* (1989) 49 Cal.3d 454, 460 [a deed of trust "conveys 'title' to a trustee"]; *Gray v. Bybee* (1943) 60 Cal.App.2d 564, 573 ["A properly executed deed of trust is effective to convey legal title . . ."], italics omitted.) As such, a claim to invalidate a deed-of-trust-based encumbrance also meets the definition of a "real property claim." We decline to re-write section 405.20 to require that a lis pendens is authorized only when "*beneficial* title" is at issue because we are not allowed to add words to a statute (e.g., *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 956 [courts may not "rewrite statutes"]) and because encumbering property with bogus deeds of trust is just as effective at "hid[ing] assets from creditors" as transferring

property outright (see *PGA West Residential Assn., Inc. v. Hulven Internat., Inc.* (2017) 14 Cal.App.5th 156, 173). And although the tenants do not in their fraudulent transfer claim specifically describe the fraudulent transfers of the remaining five properties (of the 20 specific properties listed in the lis pendens), the tenants nonetheless generally allege fraudulent "transfers as to all," and the landlord plaintiffs have not carried their burden of proving—with admissible evidence—the absence of qualifying transfers as to those five properties. (*Sweetwater Union High School v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 946 (*Sweetwater Union High School*).)

The landlord plaintiffs muster what coalesce into five groups of arguments for why their expungement claim has minimal merit.

First, they dispute our conclusion that the tenants' fraudulent transfer claim is a "real property claim" sufficient to justify a lis pendens. For support, they cite language from *Urez Corp. v. Superior Court* (1987) 190 Cal.App.3d 1141 (*Urez*), *BGJ Associates v. Superior Court* (1999) 75 Cal.App.4th 952 (*BGJ*), and *Campbell v. Superior Court* (2005) 132 Cal.App.4th 904 (*Campbell*). All of these cases stand for the same basic proposition—namely, that a lis pendens is inappropriate when the claim asserted by a party is a "claim for money damages" "alone," even if the party seeks to secure that claim through the imposition of a constructive trust on specific property. (*Urez*, at pp. 1143, 1145, 1149; *BGJ*, at pp. 967, 970-972; *Campbell*, at pp. 921-922.) Although some of the fraudulent transfers the tenants allege, as noted above, involved the use of deeds of trust (which, in general, function to secure monies owed), what makes those transfers fraudulent is that *there were no loans*; more to the

point, the deeds of trust transferred legal title. For these reasons, and as explained above, the tenants' fraudulent transfer claim would, if successful, affect title to those properties; that claim consequently qualifies as a "real property claim." The landlord plaintiffs' further observation that courts generally construe lis pendens narrowly (*Urez*, at p. 1145) does not empower us to construe that remedy in derogation of its authorizing statute.

Second, the landlord plaintiffs complain that the lis pendens was not appropriate because the tenants did not really *need* the additional security of a lis pendens because the judgment liens from the civil damages action were sufficient to protect that judgment; thus, the landlord plaintiffs assert, the tenants' real reason for recording the lis pendens was to obtain "leverage." We reject this argument. The lis pendens statute does not have a necessity or "noble motive" requirement, and we decline to create one.

Third, the landlord plaintiffs contend that the tenants' fraudulent transfer claim is barred by res judicata because it was already litigated when the tenants recovered on a fraudulent transfer claim in the civil damages lawsuit. This argument is frivolous, and rests on yet another misrepresentation of the record. For obvious reasons (most notably, the lack of a viable mechanism for time travel), the fraudulent transfer(s) underlying the claim the tenants filed in 2011 in the civil damages action could *not* be the same fraudulent transfer(s) subsequently made in 2013 at issue in the fraudulent transfer action. The landlord plaintiffs' argument to the contrary ignores the laws of physics (under which time is uni-directional), common sense, and legal ethics.

Fourth, the landlord plaintiffs attack the trial court's first rationale—namely, that expungement must be sought in the action to which the lis pendens relates. To begin, the landlord plaintiffs urge that this rationale is a *procedural* bar, and the anti-SLAPP statute only bars claims that lack minimal *substantive* merit. The landlord plaintiffs offer no legal support for their reading of the anti-SLAPP statute, and we reject it as inconsistent with the statute, as their reading would render the anti-SLAPP statute powerless to dismiss claims barred by procedural defenses such as statutes of limitation and collateral estoppel. Further, the landlord plaintiffs point out that the expungement statute does not purport to set forth the exclusive remedy for expungement (because it refers to what a party "may" do rather than what it "must" do), such that it is appropriate for the landlord plaintiffs to file a claim for expungement in an entirely new lawsuit, particularly when *not* allowing them to do so leaves them without a remedy in light of the stay of the fraudulent transfer action. Thus, they continue, the trial court should have granted a plea in abatement of their expungement claim until such time as the fraudulent transfer action stay is lifted rather than an outright dismissal. This argument makes no logical sense: If the expungement claim in this case should be in abatement (that is, stayed) until the fraudulent transfer action stay is lifted, won't the landlord plaintiffs be able to seek expungement in the fraudulent transfer action once the stay is lifted? What, then, is to be gained by allowing the landlord plaintiffs to maintain (but hold in abeyance) the same claim in a separate action? As far as we can tell, absolutely nothing.

Lastly, the landlord plaintiffs assert that the tenants could have sought remedies other than dismissal of the expungement

claim under the anti-SLAPP statute, such as seeking a stay of that claim, a consolidation of this claim with the fraudulent transfer action, or an order that the expungement claim is a compulsory counter-claim in the fraudulent transfer action. Because nothing in the anti-SLAPP statute indicates that it is available only if the moving party has exhausted all other, lesser remedies, we decline to fashion that requirement out of whole cloth.

2. *Slander of title claim*

a. Is it protected activity?

Where, as here, the sole basis for a slander of title claim is the cloud on title created by the recording of a lis pendens, "the challenged complaint for slander of title" qualifies as a "protected activity" under the anti-SLAPP statute. (*La Jolla Group II v. Bruce* (2012) 211 Cal.App.4th 461, 471.)

b. Have the landlord plaintiffs demonstrated that their slander of title claim has minimal merit?

To prevail on a claim for slander of title, a plaintiff must prove "(1) a publication, (2) without privilege or justification, (3) falsity, and (4) direct pecuniary loss." (*Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Homeowners* (2012) 205 Cal.App.4th 999, 1030; *Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th 1331, 1336.) The recording of a lis pendens has the potential to slander title because it "clouds title until the litigation is resolved or the lis pendens is expunged." (*Cyr v. McGovran* (2012) 206 Cal.App.4th 645, 652.)

The sole basis for the landlord plaintiffs' slander of title claim is the tenants' recording of the lis pendens associated with the fraudulent transfer action, but the landlord plaintiffs have not established that the lis pendens was "without . . . justification." From the time the lis pendens was recorded

until the date that the landlord paid the judgment in the civil damages action in full, the lis pendens properly secured that damages award. We noted as much in the prior appeal when we reinstated the fraudulent transfer claim. From the time that judgment was paid until now, the lis pendens properly secured the potential damages award in the malicious prosecution action. Contrary to what the landlord plaintiffs assert, a fraudulent transfer claim may be asserted as to transfers that occur "before" "[a] creditor's claim ar[ises]." (Civ. Code, §§ 3439.04, subd. (a), 3439.01, subd. (b) ["claim" includes "unmatured" and "disputed" claims]; *Mejia v. Reed* (2003) 31 Cal.4th 657, 670 ["the [Uniform Fraudulent Transfer Act] recognizes an unmatured contingent claim as a debt"].) Thus, at all times prior to today, the lis pendens was proper and any resulting cloud over title was justified. In the opinion we concurrently file today in the malicious prosecution action (*Vaughn v. Darwish* (Nov. 12, 2020, B296693) [nonpub. opn.]), we affirm the trial court's dismissal of the remaining aspects of the tenants' malicious prosecution claim. If that opinion stands, the stay of the fraudulent transfer action will expire and the landlord plaintiffs will be entitled to dismissal of that action (because the sole remaining claims are the fraudulent transfer claim and the derivative declaratory and injunctive relief claims) as well as expungement of the lis pendens associated with that action; if that opinion is overturned and the malicious prosecution action reinstated, the stay of the fraudulent transfer action will continue. Either way, there will be no point in the future when the lis pendens will be in effect *and* unjustified. Thus, the lis pendens has been viable for the entirety of its lifespan, and this lifelong justification forecloses the landlord plaintiffs' slander of title claim.

The landlord plaintiffs raise two arguments in response. First, they argue that they had valid reasons to transfer the properties alleged to be fraudulent, such that the fraudulent transfer claim lacks merit and does not support a lis pendens. Alas, the landlord plaintiffs opted not to introduce any *evidence* to support this argument, and the burden of showing minimal merit is one that must be met by evidence, not argument. (*Sweetwater Union High School*, *supra*, 6 Cal.5th at p. 946.) Second, they argue that the trial court was wrong to reason that their slander of title claim failed merely because their expungement claim failed. However, we do not rely upon this reason, so its viability is irrelevant.

3. *Fraudulent transfer claim*

We need not decide whether the landlord plaintiffs' fraudulent transfer claim was properly dismissed under the anti-SLAPP statute because, following our affirmance of the dismissal of the slander of title claim, the fraudulent transfer claim would be properly dismissed on a motion for judgment on the pleadings. A motion for judgment on the pleadings is appropriate when "the face of the complaint" and "facts capable of judicial notice" demonstrate that the complaint does not "state facts sufficient to constitute a cause of action." (§ 438, subds. (c)(1)(B)(ii), (d); *Hart*, *supra*, 12 Cal.App.5th at p. 224.) To avoid having the trial court engage in the idle act of entertaining such a motion on remand when its outcome is a foregone conclusion, we solicited supplemental briefing from the parties on this issue and, after considering those arguments, direct the trial court to dismiss this claim. (*City of National City v. Wiener* (1992) 3 Cal.4th 832, 850 ["'[W]here matters of which the court has judicial knowledge occur subsequent to the trial court's action and have the effect of

destroying the basis for the plaintiff's cause of action, it has been held that the appellate court may dispose of the case upon those grounds'"]; *Stafford v. People* (1956) 144 Cal.App.2d 79, 82 ["It would be an idle act to remand the case to the trial court for further proceedings when . . . plaintiff could not in any event prevail through any further proceedings in that court."]; *Ena North Beach, Inc. v. 524 Union Street* (2019) 43 Cal.App.5th 195, 215 [remand unnecessary where "the result of a remand is a foregone conclusion"].)

To state a claim for fraudulent transfer and as pertinent here, a plaintiff must allege that the (1) debtor has a debt, (2) the debtor transferred assets (a) with an intent to hinder, delay or defraud a creditor or (b) without receiving a reasonably equivalent value in return, and (3) the debtor intended to, or reasonably believed, or reasonably should have believed that he would incur debts beyond his ability to pay as they became due. (Civ. Code, § 3439.04, subds. (a)(1), (a)(2); *Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 121-122.)

Here, the landlord plaintiffs do not state a claim for fraudulent transfer. That is because the sole "debt" they allege Riley is seeking to evade—that is, the "judgment for substantial damages [that the landlord plaintiffs] expect to obtain from Riley for his egregious slander of title" or for Riley's wrongful recording of a lis pendens—does not exist in light of our affirmance of the dismissal of those very same claims. We may take judicial notice of our own ruling. (Evid. Code, §§ 459, 452, subd. (c).)

The landlord plaintiffs' sole response is that they should be permitted to voluntarily dismiss their claim without prejudice to filing a new fraudulent transfer claim (presumably, to allege a fraudulent transfer based on future debts Riley may come to owe

them). These future debts are too abstract to justify the claim at this time. "[T]he courts have a direct interest in the termination of litigation. The maxim of the law runs that it is to the interest of the republic that there be an end to the case." (*Charles H. Duell, Inc. v. Metro-Goldwyn-Mayer Corp.* (1932) 128 Cal.App. 376, 385.) The landlord plaintiffs are free to bring a future claim for fraudulent transfer should one be warranted based on the facts, but we decline to allow this claim to persist indefinitely as the landlord plaintiffs seek to hold Riley liable in one of the multiplicity of lawsuits currently pending.

DISPOSITION

The order is affirmed. The tenants are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ